IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2161 OF 2004

Smt.Komal Gopal Chhabria & Anr. ..Petitioners.

Versus

Shri Gulabrai Mirchandani & Ors. ..Respondents.

Mr. A.S. Gadkari for the Petitioners.

Mr. V.Y. Sanglikar for the Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 24TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr. Sanglikar, learned counsel waives service of rule for Respondents.

Heard by consent.

2. The petitioners are aggrieved by the order of the Maharashtra State Co-operative Appellate Court, rejecting the petitioners application for proceeding against the respondents for contempt of the order of

the Co-operative Appellate Court.

3. The order which is alleged to have been violated is said to be an order of the Maharashtra State Co-operative Appellate Court dated 23.08.2002 by which the status -quo was extended till further order.

4. The dispute between the parties seems to have been regarding the liability of the society to prevent leakage in the flat owned by the petitioners.

5. According to the respondents the order of status-quo was violated because on 19.01.2003 some people opened the flat and started some work in the flat No.8, which is a flat above the petitioner's flat, in regard to which the status-quo order was passed. As a result, water is said to have flowed from flat No.8 into the balcony of the petitioners flat No.4. The Co-operative Appellate court has found, as a matter of fact, that there is no such violation of the order of status-quo. The Appellate Court seems to have accepted the explanation of the society that the leakage problem was in existence since some time. It is specifically observed that the petitioners have failed to establish that the

respondents have done something while order of status-quo was pending. The application for contempt was, therefore, rejected by the Appellate Court.

6. In my view, the impugned order is purely a result of finding of fact and no perversity for arriving at that finding has been shown by the petitioners. Subsection 5 of Section 148A of the Maharashtra Co-operative Societies Act, 1960 reads thus :-

> (5) In the case of contempt of itself, the Co-operative Appellate Court shall record the facts constituting such contempt, and make a report in that behalf to the High Court.

7. It is purely within the jurisdiction of the Co-operative Appellate Court to determine whether the facts constitute such contempt or otherwise. The court having come to a contrary conclusion, there is no reason to interfere.

8. The petition is therefore, dismissed.

DT.24.08.05 (S.A.BOBDE,J)

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